

ARKANSAS SUPREME COURT

No. CR 07-309

WILLIAM J. BROWN
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 24, 2007

PRO SE MOTION FOR EXTENSION OF
TIME TO FILE APPELLANT'S BRIEF
[CIRCUIT COURT OF BENTON
COUNTY, CR 2004-464, HON. TOM J.
KEITH, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

On November 6, 2006, appellant William J. Brown, an inmate incarcerated in the Arkansas Department of Correction, filed a petition for writ of habeas corpus in the Circuit Court of Benton County.¹ The circuit court denied and dismissed the petition, and appellant has lodged an appeal from that order in this court.

Appellant now seeks an extension of time to file his brief-in-chief. As it is clear that the appellant could not be successful on appeal, the appeal is dismissed. The motion is moot. This court has consistently held that an appeal from the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999

¹Judgment was entered on January 21, 2005, reflecting that appellant had entered a plea of guilty to the offense of second-degree sexual assault and been placed on five years' probation. On July 17, 2006, judgment was entered reflecting that the court had revoked probation and sentenced appellant to a term of 180 months' imprisonment.

S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

It is not clear from the record whether appellant was in custody in Benton County when he filed the petition for writ of habeas corpus, but the record reflects that by the time the court entered its order he was incarcerated in Lincoln County.² We dismiss the appeal because the circuit court could no longer grant the relief sought by appellant once he was removed from Benton County.

Any petition for writ of habeas corpus to effect the release of a prisoner is properly addressed to the circuit court in the county in which the prisoner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001. *Lukach v. State*, ___ Ark. ___, ___ S.W.3d ___ (Apr. 26, 2007) (per curiam). Appellant did not invoke Act 1780, and while Benton County Circuit Court may have had personal jurisdiction to issue and make returnable before itself a writ of habeas corpus when the petition was filed, it did not have personal jurisdiction to release a petitioner who was held in another county. *See Id.* A circuit court does not have jurisdiction to release on a writ of habeas corpus a prisoner not in custody in that court's jurisdiction. *Pardue, supra*, citing *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Appeal dismissed; motion moot.

²We take notice that the records of the Department of Correction now show that appellant remains incarcerated in Lincoln County.